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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92042082
Party	Defendant International Gold Star Trading Corp.
Correspondence Address	Roger S. Thompson Cohen, Pontani, Lieberman & Pavane LLP 551 Fifth Avenue Suite 1210 New York, NY 10176 UNITED STATES docket@cplplaw.com, rthompson@cplplaw.com
Submission	Motion to Strike
Filer's Name	Roger S. Thompson
Filer's e-mail	docket@cplplaw.com, rthompson@cplplaw.com
Signature	/Roger S. Thompson/
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THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the Matter of Registration No. 2,479,287
Issued on August 21, 2001

-----X
FOUR SEASONS DAIRY, INC.,

Petitioner,

-against-

INTERNATIONAL GOLD STAR TRADING CORP.,

Registrant.
-----X

DEPOSITION OF NATALIE WALEWITSCH

New York, New York

Wednesday, June 4, 2008

Reported by:
SARA FREUND

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DEPOSITION of NATALIE WALEWITSCH,
a witness herein, taken pursuant to Article 31 of
the Civil Practice Law & Rules of Testimony, and
Notice, held at 189 Montague Street, Brooklyn, New
York, at the above-mentioned time, before SARA
FREUND, a shorthand reporter and a Notary Public of
the State of New York.

1 APPEARANCES:

2
3 SAMUEL FRIEDMAN, ESQ.
Attorney for Petitioner
4 225 Broadway - Suite 1804
New York, New York 10007
5
6

7 COHEN, PONTANI, LIEBERMAN & PAVANE
551 Fifth Avenue
8 New York, New York 10176
BY: ROGER S. THOMPSON, ESQ.
9
10

11 ALSO PRESENT:

12 Galina Pincow
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1 N. Walewitsch

2 N A T A L I E W A L E W I T S C H, after having
3 first been duly sworn by a Notary Public of the
4 State of New York, was examined and testified as
5 follows:

6 EXAMINATION BY MR. FRIEDMAN:

7 Q. Please state your name and address for
8 the record.

9 A. Natalie Walewitsch, 17 53rd Street,
10 Brooklyn, New York 11232.

11 MR. FRIEDMAN: Counsel have conferred
12 and have agreed upon some stipulations:

13 That all objections, except as to the
14 form of the question, are reserved until the
15 time of trial. That the transcript may be
16 sworn before any notary. And that counsel
17 for petitioner shall retain custody of the
18 original exhibits.

19 Q. Miss Walewitsch, I represent Four
20 Seasons Dairy. I will be asking you a number of
21 questions. The court reporter to my right will be
22 taking down everything I say and everything you
23 say. It's important that if you do not understand
24 a question that you let me know, and I will attempt
25 to rephrase the question.

1 N. Walewitsch

2 Are currently employed?

3 A. Yes.

4 Q. Where?

5 A. Natar Foods.

6 Q. What is Natar Foods?

7 A. Wholesale distribution for European
8 products.

9 Q. Food products?

10 A. Yes.

11 Q. What is your position with Natar Foods?

12 A. Buyer.

13 Q. Are you also a principal of the company?

14 A. Yes.

15 Q. And for how long have you been a buyer
16 for Natar Foods?

17 A. Ten years.

18 Q. When you say "buyer," could you be a
19 little bit more specific about what you do as a
20 buyer.

21 A. I buy all the products whatever Natar
22 Foods sells.

23 Q. And does Natar Foods sell any dairy
24 products?

25 A. Yes.

1 N. Walewitsch

2 Q. When did Natar Foods start doing
3 business?

4 A. 1999.

5 Q. Approximately when in 1999?

6 A. Approximately August, September --
7 something like that.

8 Q. So is it from that period of time --
9 from August or September of 1999 -- that you've
10 been the buyer for Natar Foods?

11 A. Yes.

12 Q. Have you ever bought products from a
13 company known as Four Seasons Dairy?

14 A. Yes.

15 Q. Have you bought a product under the
16 brand "Babushkinow" from Four Seasons Dairy?

17 A. Yes.

18 Q. When did you start buying dairy products
19 from Four Seasons Dairy?

20 A. Since we opened.

21 Q. Since you opened. So that would be
22 around --

23 A. 1999.

24 Q. With whom at Four Seasons do you
25 interact?

1 N. Walewitsch

2 A. Both partners.

3 Q. Who are those partners?

4 A. Oleg and Alex.

5 Q. That would be Alex Becker and Oleg
6 Kessler?

7 A. Yes.

8 Q. And back in 1999 with whom at Four
9 Seasons did you interact?

10 A. With both of them.

11 Q. That would be Alex Becker and Oleg
12 Kessler?

13 A. Yes.

14 Q. Back in 1999, could you tell us
15 approximately how much of the dairy products you
16 were purchasing from Four Seasons that you were
17 purchasing under the name "Babushkinow"?

18 A. Up to 30 cases, maybe, a week -- 30, 40.
19 I can't tell you exactly, but approximately that.

20 Q. Has Natar Foods continued purchasing
21 dairy products under the name "Babushkinow" from
22 Four Seasons from 1999 until today?

23 A. Absolutely.

24 Q. And has the volume of purchases
25 increased or decreased?

1 N. Walewitsch

2 A. Increased.

3 Q. So continuously from 1999 until today
4 the volume has increased?

5 A. Yes.

6 Q. I'm showing you something that was
7 marked as Petitioner's Exhibit 1 of April 10 in
8 this matter. Could you identify what you see in
9 this?

10 A. Yes.

11 Q. What is this, please?

12 A. That's butter what they call "Babushka."

13 Q. Is that a Four Seasons product?

14 A. Absolutely. We used it for the price
15 list when we opened up.

16 Q. I'm going to ask you a couple of
17 questions still about Petitioner's 1.

18 Is this, more or less, the label that's
19 been on the product since Natar started buying from
20 Four Seasons?

21 A. Yes.

22 Q. You mentioned a price list. I'm showing
23 you what's been marked previously as Petitioner's
24 Exhibit 13 at a deposition on April 10. Can you
25 identify that?

1 N. Walewitsch

2 A. Yes.

3 Q. What is this, please?

4 A. It's a price list for our company, Natar
5 Foods, that we use a few items. One of them is
6 Babushka's butter from Four Seasons.

7 Q. Is this the entire price list?

8 A. No. This is just a cover. This is the
9 cover for the price list for our company.

10 Q. Has Natar continued to use the
11 Babushkinow label on the cover of its price list --

12 A. Yes.

13 Q. Let me finish the question before you
14 answer -- from whenever this started until the
15 present?

16 A. Yes.

17 Q. Can you tell me approximately when you
18 put the Babushkinow label on the cover of your
19 price list?

20 A. Maybe 2000, maybe '99 -- almost since we
21 opened.

22 Q. And this price list, is it distributed
23 to your customers?

24 A. Yes.

25 Q. Back in 1999 when Four Seasons sent

1 N. Walewitsch

2 products to Natar Foods, how was it sent, in what
3 manner?

4 A. They used to truck themselves. They
5 used to bring the products on their own.

6 Q. "They" being Alex and Oleg?

7 A. Yes.

8 Q. They would bring the products to where?

9 A. To our warehouse.

10 Q. Here in New York?

11 A. Yes.

12 Q. Did Alex and Oleg themselves bring the
13 products into the store?

14 A. Yes.

15 Q. In what manner did they bill Natar for
16 the product sold to Natar?

17 A. With invoices.

18 Q. Back in 1999, could you tell me a little
19 bit about the process of how that was done, how
20 they would provide the invoice to Natar?

21 A. They used to write everything by hand.
22 The invoices was not computerized. They took an
23 order by the hand, and the invoices were also
24 written by hand.

25 Q. And were the invoices contained within a

1 N. Walewitsch

2 booklet they would carry around?

3 A. Yes. Like a standard invoice receipt
4 book -- however you call them.

5 Q. Would it be a regular size, like an
6 eight-and-a-half-by-eleven paper, or some other
7 size?

8 A. Like this. I'm not sure what size is
9 that.

10 Q. Well, if you look at Petitioner's 1 in
11 front of you that's --

12 A. Yes. About that size.

13 Q. Not very small?

14 A. No.

15 Q. I have no further questions at this
16 time.

17 EXAMINATION BY MR. THOMPSON:

18 Q. Miss Walewitsch, my name is Roger
19 Thompson. I represent International Gold Star
20 Trading Corporation. It's represented by not just
21 me, but its president, Miss Galina Pincow. Have
22 you ever met Miss Pincow before?

23 A. No.

24 Q. Have you ever met anyone from
25 International Gold Star Trading Corporation before?

1 N. Walewitsch

2 A. What do you mean by knowing anybody?

3 Q. Have you ever met anyone from
4 International Gold Star?

5 A. Yes. I used to have people who used to
6 work for her and then worked for my company, but
7 owners, no.

8 Q. Do you know when you first heard of
9 International Gold Star Trading Corporation?

10 A. Since we've been in the business.

11 Q. What is your understanding of what
12 International Gold Star Trading does?

13 A. The same thing we do, distributing food
14 products. And I believe they smoke the fish.

15 MR. FRIEDMAN: I'm going to object to
16 this questioning as exceeding the scope of
17 direct.

18 MR. THOMPSON: Okay.

19 Q. As part of your buying duties at Natar
20 did you ever buy products from International Gold
21 Star Trading Corporation?

22 A. No.

23 Q. Does Natar have any retail
24 establishments or is it only wholesale?

25 A. Only wholesale.

1 N. Walewitsch

2 Q. Now, first of all, is Mr. Friedman
3 representing you here today? Is he acting as your
4 lawyer, or not?

5 A. No.

6 Q. In preparation for your deposition were
7 you shown any documents other than the two that we
8 see in front of you right now?

9 MR. FRIEDMAN: I'm just objecting
10 because your question assumes that she was
11 shown the documents before the deposition.

12 MR. THOMPSON: My question says I don't
13 care if she was shown those two or not. I'm
14 not meaning to infer that she was shown
15 those.

16 MR. FRIEDMAN: Okay.

17 A. These are the documents that I saw so
18 far.

19 Q. Were you shown those documents before
20 you came here today?

21 A. This is my product. Who's supposed to
22 show me those products?

23 MR. FRIEDMAN: Petitioner's 13 is a
24 Natar Foods price list. It's been generated
25 by this witness's company.

1 N. Walewitsch

2 MR. THOMPSON: I'm asking if she was
3 shown it with a sticker attached to it
4 showing that it was a document in this
5 proceeding.

6 Q. Now, this other document, which has been
7 marked as Petitioner's 1, which shows a label
8 attached to a Babushkinow dairy product is not a
9 Natar product; is that correct?

10 A. No. This is Four Seasons' product.

11 Q. Is that the same label that has always
12 been on the product insofar as you know?

13 A. Yes.

14 Q. Exactly the same?

15 A. I don't recall. Maybe a few letters or
16 colors maybe, but it looks the same.

17 Q. I ask you to compare Petitioner's 1 to
18 Petitioner's 13, and in the lower right corner of
19 Petitioner's 13 there is a picture of a Babushkinow
20 product; is that right?

21 A. Yes.

22 Q. And on the bottom part of that they have
23 some language in Cyrillic; is that right?

24 A. Yes. It says "Maslo" -- is butter.

25 Q. And "Maslo," that would be a Cyrillic

1 N. Walewitsch

2 word. I'll spell it for the purposes of the
3 record. In English it would be M-A-S-L-O; is that
4 right?

5 A. Yes.

6 Q. And that is Russian for butter; is that
7 right?

8 A. Yes.

9 Q. However, on the pictures of Exhibit 1,
10 the round label in that same location says
11 "Granny." Is that correct?

12 A. Yes.

13 Q. So the two labels are different?

14 A. If you consider them different, yes,
15 it's different. But it's the same pictures and
16 colors and the same setup.

17 Q. Do you know if, in fact, you ever
18 purchased products with the picture of Exhibit 1 on
19 it that said Granny on the bottom?

20 A. Well, obviously, if we use it for our
21 price list we probably purchased from this one.

22 Q. Again, for the purposes of the record
23 when you say "this one" you're pointing to Exhibit
24 13?

25 A. Whatever is shown on our price list.

1 N. Walewitsch

2 Q. So, as far as you know you never
3 purchased the one that's on Exhibit 1. Is that
4 what you're telling me?

5 MR. FRIEDMAN: Objection.

6 A. What kind of question is that? We're
7 still selling this product.

8 Q. And that's the one with the word Granny
9 on it?

10 A. Yes.

11 MR. FRIEDMAN: Objection.

12 MR. THOMPSON: On what basis?

13 MR. FRIEDMAN: Objection to form.

14 MR. THOMPSON: The last one she was
15 pointing to what she was referring to, and I
16 was asking it for clarification if that's the
17 one with the word Granny on it.

18 MR. FRIEDMAN: You're asking for
19 purposes of confusion.

20 MR. THOMPSON: I'm trying to avoid
21 confusion.

22 Q. Do you know if, in fact, you have ever
23 sold the product that has the word Granny on it?

24 A. I'm not answering that.

25 Q. Why not?

1 N. Walewitsch

2 A. Why not? Because I'm not going every
3 day to check my product, every word if it's changed
4 or not. I know I'm selling this product for a long
5 time, and this is the product what I'm selling. If
6 a company changed two letters or color or whatever,
7 I can't keep up with that because I'm not standing
8 in the refrigerator packing this butter.

9 Q. So my question was if you knew, and if
10 your answer is you don't know --

11 A. I can't tell you the difference. Just I
12 know I'm selling this butter and it says
13 Babushkinow for ten years. I don't know if they
14 changed a word and it says Maslo or Granny or
15 whatever. What's the difference?

16 Q. First of all, you said you were selling
17 it for ten years, so that would make it in 1998.
18 Is that what you meant?

19 A. I'm just saying in general. You're
20 trying to make me confused saying what's the
21 difference between those two stickers. I'm saying
22 that I'm not working in the refrigerator packing
23 dairy products to make sure the label is staying
24 the same on the same product. That's what I'm
25 trying to tell you.

1 N. Walewitsch

2 Q. I'm trying to be precise. And I hope
3 you understand that it's important that we be clear
4 that all of the testimony we get is completely true
5 and accurate. Do you understand that?

6 A. Absolutely. I told you I'm selling this
7 butter since we opened our company. If the company
8 decides to change a little bit on the label, I
9 can't control that. Do you agree with me?

10 Q. I didn't ask you --

11 A. I can't keep up to see if every product
12 didn't change one letter or color or anything,
13 right?

14 Q. I don't know what you can or can't do.
15 So you don't know if, in fact, you have
16 ever sold the one with "Granny" on it?

17 MR. FRIEDMAN: Objection. Asked and
18 answered. You're badgering the witness.
19 Move on.

20 MR. THOMPSON: I will point out, Mr.
21 Friedman, that you don't get to tell me to
22 move on.

23 MR. FRIEDMAN: Yes, I do.

24 MR. THOMPSON: No, you don't.

25 MR. FRIEDMAN: Yes, I do.

1 N. Walewitsch

2 Q. Now, Miss Walewitsch, I'm asking you --
3 because I don't believe you have answered -- do you
4 know if you have or have not sold the product that
5 has the word Granny on it?

6 A. We have sold that product.

7 Q. Do you know when?

8 A. I can't tell you exactly when.

9 Q. Is it what you sell today?

10 A. Probably.

11 Q. Do you know for sure?

12 A. I can't tell for sure. If you show me
13 this label today from Four Seasons' product -- I'm
14 sorry, let me finish now -- if you show me this
15 label today from Four Seasons' product on this
16 particular item, and this was before, like you told
17 me, and they changed -- which, the truth, I never
18 paid attention to that. If you say this is
19 different from this, I agree. So we're probably
20 selling this butter right now.

21 MR. FRIEDMAN: Witness is referring to
22 Petitioner's Exhibit 1.

23 Q. Please understand when you point to
24 something and you say "this" and then "this," that
25 doesn't show up on the printed record; so it's

1 N. Walewitsch

2 important that we identify. The first time you
3 referred to the product was --

4 A. It says "Babushkinow" butter, and this
5 says "Babushkinow" butter.

6 MR. FRIEDMAN: Referring to Petitioner's
7 1 and 13.

8 Q. I was simply trying to point out that
9 for purposes of the written record, the first time
10 you referred to "this" product you pointed to
11 Exhibit 1, which is the green one on the right --

12 MR. FRIEDMAN: All you're doing now is
13 confusing the record, Mr. Thompson. When the
14 witness refers to the exhibit pointed out at
15 that time, say it's Petitioner's 1 or
16 Petitioner's 13. You are purposefully trying
17 to confuse the record at this point, and I
18 will not allow it.

19 MR. THOMPSON: I will point out that
20 when she was testifying I tried to interrupt
21 to ask her to point to that, and she raised
22 her hand and said "Let me finish." I was
23 attempting very diligently --

24 MR. FRIEDMAN: You are attempting to
25 confuse the record. That's clear, and the

1 N. Walewitsch

2 record will reflect that. Please move on.

3 MR. THOMPSON: I believe what will be
4 clear on the record is that you are refusing
5 to allow this testimony to proceed, and I
6 think that's highly inappropriate.

7 Q. Now, I would like to ask you if you ever
8 sold any products called Babushkinow other than the
9 ones that are shown in Exhibits 1 and 13?

10 MR. FRIEDMAN: Objection.

11 A. Butter?

12 Q. Any products called Babushkinow.

13 A. I'm not answering that.

14 Q. Is that you are refusing to answer or
15 you don't --

16 A. I refuse to answer.

17 Q. May I ask why?

18 A. It's my personal business. Does it make
19 a difference?

20 Q. I believe that it does.

21 A. For me, no.

22 Q. So you're refusing to answer the
23 question?

24 A. Yes.

25 Q. Have you ever sold any other dairy

1 N. Walewitsch

2 product with the name Babushkinow on it?

3 A. Yes.

4 Q. What kind of product did you sell?

5 A. Farmer's cheese.

6 Q. Who was the supplier of that farmer's
7 cheese?

8 MR. FRIEDMAN: Objection. If this
9 relates to Four Seasons, fine. But if it
10 doesn't -- if you're pressing --

11 Does it relate to Four Seasons?

12 THE WITNESS: It does not.

13 MR. FRIEDMAN: You're trying to confuse
14 the record clearly. Your client is a
15 competitor with Miss Walewitsch, and you are
16 proceeding improperly.

17 MR. THOMPSON: I don't need to join you.

18 Q. So since Mr. Friedman was trying so hard
19 to confuse the record, I'll see if I can clear it
20 up here. You said you have sold farmer's cheese,
21 but I didn't hear your answer as to whether you
22 bought it from Four Seasons or not.

23 A. No.

24 Q. Have you ever purchased any products
25 with the name Babushkinow on it from someone other

1 N. Walewitsch

2 than Four Seasons?

3 A. Yes.

4 Q. May I ask from whom?

5 MR. FRIEDMAN: Objection.

6 A. I'm not answering that.

7 Q. Has Natar ever sold farmer's cheese
8 under its own label called Babushkinow?

9 A. Yes.

10 MR. THOMPSON: I'd like to have this
11 marked as Respondent's Exhibit 5.

12 (Respondent's Exhibit 5 was marked for
13 identification.)

14 Q. I ask you to look at Exhibit 5. Have
15 you seen that before?

16 A. Absolutely.

17 Q. Can you please identify what that is?

18 A. This is Natar's Babushka's Tvorog --
19 farmer's cheese.

20 MR. THOMPSON: For the purposes of the
21 written record Tvorog is spelled T-V-O-R-O-G.

22 Q. Now, has Natar previously sold farmer's
23 cheese under the name Babushkinow or Babushka?

24 A. What do you mean "previous"?

25 Q. Before today.

1 N. Walewitsch

2 A. Of course.

3 Q. Do you still sell that product?

4 A. Yes.

5 Q. Do you remember if you ever received a
6 letter at Natar concerning the sale of farmer's
7 cheese under the name Babushkinow from
8 International Gold Star's attorneys?

9 A. Maybe a long, long time ago.

10 MR. THOMPSON: I'll have this marked as
11 Exhibit 6.

12 (Respondent's Exhibit 6 was marked for
13 identification.)

14 Q. I'll ask if you could look at Exhibit 6
15 and tell me if you have ever seen that?

16 A. Maybe. I probably did. Like I said,
17 it's been a long while.

18 MR. THOMPSON: Just for the record, this
19 is a letter dated March 11, 2002 from the
20 firm Cohen, Pontani, Lieberman & Pavane,
21 counsel for International Gold Star.

22 Q. It was addressed to Mr. Aron Walewitsch
23 at Natar Foods; is that right?

24 A. Yes.

25 Q. Could you tell me who Mr. Aron

1 N. Walewitsch

2 Walewitsch is?

3 A. Yes. He's the president of the company.

4 Q. Are you related to him?

5 A. Yes.

6 Q. In what capacity?

7 A. He's my husband.

8 Q. Although the letter is addressed to Mr.

9 Aron Walewitsch, do you remember if you saw this
10 letter in the time frame of March 2002?

11 A. I don't recall. I know we received the
12 letter. I can't tell you -- probably this one.

13 Q. Do you remember if you -- and by "you" I
14 mean Natar -- took any steps in response to this
15 letter?

16 A. No.

17 Q. Did you, at the time, indicate that you
18 would stop selling the farmer's cheese under the
19 name Babushkinow?

20 A. No.

21 Q. Did you, in fact, stop selling the
22 cheese at any time?

23 A. No.

24 Q. So did you continue selling this product
25 continuously since the time of 2002?

1 N. Walewitsch

2 A. Yes.

3 Q. With respect to the farmer's cheese sold
4 under the name Babushkinow that is the subject of
5 Exhibit 5, did you at Natar have that product
6 specifically made for you?

7 A. Yes.

8 Q. Was that by the name -- the product --

9 MR. FRIEDMAN: I'm objecting to this on
10 the grounds exceeding the scope of direct.
11 You're clearly using this for purposes other
12 than this case, Mr. Thompson. It is totally
13 improper.

14 Q. And it is made by Queensborough Farms;
15 is that right?

16 A. Probably.

17 Q. Did you ever buy a farmer's cheese from
18 --

19 MR. FRIEDMAN: I'd like the record to
20 reflect that Counsel is reading from notes
21 supplied by his client, who is sitting along
22 his side, who is a direct competitor of Miss
23 Walewitsch. This is improper, Mr. Thompson,
24 and I'm asking you to stop it.

25 MR. THOMPSON: I'm going to continue to

1 N. Walewitsch

2 conduct my examination, whether you like it
3 or not.

4 MR. FRIEDMAN: This is irrelevant.

5 A. I got to go. I can't answer any other
6 questions. Besides our company, there is a lot of
7 companies who sell products under Babushkinow. It
8 doesn't have to be butter or farmer's cheese; it
9 could be tomatoes, it could be pickles. A lot of
10 people of different companies using this name. I
11 don't think this is a restricted name because
12 everybody is still using it until today.

13 MISS PINCOW: Thank you.

14 THE WITNESS: You're welcome.

15 A. Any other questions, call me. I got to
16 go. I'm sorry.

17 MR. FRIEDMAN: Thank you very much.

18 MR. THOMPSON: I will be moving to
19 exclude this testimony since, again, your
20 witnesses don't allow me to finish my
21 examination.

22 MR. FRIEDMAN: What do you mean "again"?

23 MR. THOMPSON: Well, Mr. Nigrow --

24 MR. FRIEDMAN: Well, Mr. Nigrow, we're
25 about to complete that.

1 N. Walewitsch

2 MR. THOMPSON: Will we get to complete
3 Miss Walewitsch, as well?

4 MR. FRIEDMAN: She's done.

5 MR. THOMPSON: I haven't finished my
6 questions.

7 MR. FRIEDMAN: You're using it for
8 improper purposes.

9 MR. THOMPSON: I'm allowed to impeach
10 the witness. You may not be aware of that.

11 MR. FRIEDMAN: You were not impeaching
12 the witness. You were attempting to delve
13 into matters that are between your client and
14 this witness.

15 MR. THOMPSON: I will point out for the
16 record that I am allowed to impeach
17 witnesses during my cross-examination.

18 MR. FRIEDMAN: It seemed like you were
19 finished.

20 MR. THOMPSON: I don't believe that I
21 did.

22 MR. FRIEDMAN: Well, I believe you did.

23 MR. THOMPSON: Well, you're wrong again.

24 And if you intend to use this testimony,
25 because she walked out during the middle of

1 N. Walewitsch

2 my cross-examination, I will object.

3 MR. FRIEDMAN: She walked out at the end
4 of your cross-examination.

5 MR. THOMPSON: It was not the end of my
6 cross-examination because I didn't get to
7 finish. I get to determine when the end of
8 my cross-examination is, you don't.

9 MISS PINCOW: Roger, we will impeach
10 this witness, whatever it takes.

11 (Time noted: 2:10 p.m.)
12

13
14

NATALIE WALEWITSCH
15
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A C K N O W L E D G E M E N T

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, NATALIE WALEWITSCH, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of June 4, 2008; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

NATALIE WALEWITSCH

Subscribed and sworn to before me
this _____ day of _____, 2008.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)

:ss.

COUNTY OF KINGS)

I, SARA FREUND, a Notary Public
within and for the State of New York, do hereby
certify:

THAT NATALIE WALEWITSCH, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 16th day of June, 2008.


SARA FREUND

Trade Secret/Commercially Sensitive

E R R A T A S H E E T

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Subscribed and sworn to before me

this _____ day of _____, 2008

Notary Public

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August 11, 2008

By ESTTA Filing

Andrew P. Baxley, Esq.
Interlocutory Attorney
Trademark Trial and Appeal Board
United States Patent and Trademark Office
Alexandria, VA 22313

Re: *Four Seasons Dairy, Inc. v. International Gold Star Trading Corp.*
Cancellation No. 92/042,082
Our ref.: 5060-2L

Dear Mr. Baxley:

We represent the registrant, International Gold Star Trading Corp. ("Gold Star"), in the above matter.

I write this letter to ask for a ruling on whether Gold Star is obligated to seek a subpoena to secure the completion of the cross-examination testimony of a witness, Ms. Natalie Walewitsch, called by the petitioner, Four Seasons Dairy, Inc. ("Four Seasons") during its testimony period. Ms. Walewitsch refused to answer certain questions during her cross-examination, and then walked out before her cross-examination was complete, refusing to answer any further questions.

Ms. Walewitsch is a third party witness who had been originally scheduled to testify on April 16, 2008, during Four Seasons' testimony period. Four Seasons elected not to issue a subpoena for her testimony, and she canceled shortly before the scheduled deposition, claiming the press of some unspecified business matter. Four Seasons sought, and received, an extension of its testimony period for the purpose of taking her deposition, which was ultimately re-set for June 4, 2008. A full and complete copy of the transcript of that deposition as provided by counsel for Four Seasons is attached hereto as Exhibit A. References below to page and line numbers are to this transcript.

Ms. Walewitsch's deposition commenced on the appointed day. Prior to the commencement of the direct examination, Mr. Friedman stated for the record stipulations that counsel had reached, including that all objections except as to form were reserved. (page 4, lines 11-15). Counsel for Four Seasons conducted and completed his direct examination (pages 4-11). I began my cross-examination and, partway through the cross-examination (page 27, lines 5, *et seq.*), Ms. Walewitsch walked out of the deposition, frustrating my attempt to complete my examination.

Ms. Walewitsch's exit was preceded by a series of objections by counsel for Four Seasons to the content of the cross-examination (notwithstanding the stipulation that such objections were reserved), and Ms. Walewitsch's refusal to answer some specific questions relating to her company's sales of goods bearing the trademark at issue (e.g., page 21, lines 7-24; and page 22, line 24 – page 23, line 6).



Andrew P. Baxley, Esq.
August 11, 2008
Page 2

Given that I was unable to complete the cross-examination, Ms. Walewitsch's testimony should not be considered by the Board, as it would be prejudicial to Gold Star for the Board to consider testimony that has not been fully tested by cross-examination. However, given the Board's usual practice of not considering a motion to strike except as part of its consideration of all trial testimony, Gold Star seeks a resolution of the issue before its testimony period ends.

According to T.B.M.P. § 707.03(d), a party whose questions are not answered at a deposition may have recourse through 35 U.S.C. § 24 to the local U.S. District Court for an order compelling the testimony of the recalcitrant witness. However, that statute requires that the witness have been served with a subpoena, a process that Four Seasons declined to follow, leaving Gold Star without such recourse for completing its cross-examination (although Four Seasons was able to complete its direct examination).

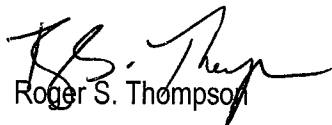
T.B.M.P. § 707.03(d) further provides "[t]hat there is no mechanism for obtaining from the Board, prior to final hearing, a ruling on the propriety of an objection to a question propounded during a testimony deposition," leaving the issue for resolution by the Board as part of its determination at the final hearing. This section also provides that "the Board may presume that an answer would have been unfavorable to the party whose witness refused to answer, or may find that the refusal to answer reduces the probative value of the witness's testimony." That leaves Gold Star without remedy where the witness not only refused to answer *specific* questions, but completely walked out of the deposition, leaving many questions not only unanswered, but unasked.

Gold Star could, in theory, attempt to subpoena Ms. Walewitsch to compel her to answer its remaining cross-examination questions, but it is submitted that it would be unfair to Gold Star to impose such a burden on it in order to conclude its cross-examination of Four Seasons' witness. The burden should be on Four Seasons to insure that its witnesses appear and testify fully.

Accordingly, Gold Star seeks a ruling on how to proceed to either secure a completion of cross-examination of Ms. Walewitsch, at Four Seasons' expense (insofar as subpoena expenses are concerned – Gold Star realizes that the Board does not have the authority to award any financial sanctions directly, T.B.M.P. § 502.05), or to exclude her testimony if Gold Star's cross-examination is not completed.

The undersigned is available for a telephone conference if that would be of assistance in resolving the issue, although I will be in a deposition in Pensacola, Florida, on Wednesday, August 13, 2008 leaving mid-day on Tuesday August 12, 2008.

Very truly yours,
COHEN PONTANI LIEBERMAN & PAVANE LLP


Roger S. Thompson

cc: Samuel Friedman, Esq. (by e-mail)